

REMARKS

Applicants wish to thank the Examiner for his kind consideration and helpful suggestions during the Interview conducted on December 28, 2005. All of his suggestions are incorporated herein by the present Amendment.

Claims 1, 2, 4-7 and 9-14 are amended, accordingly, without prejudice or disclaimer. Claims 3, 8, 15 and 16 are cancelled, also without prejudice or disclaimer. Claims 1, 2, 4-7 and 9-14 remain in this case.

Reconsideration of this Application is respectfully requested.

* * * * *

Initially, in the Office Action, the Examiner advised Applicants that claims 15 and 16 are withdrawn from further consideration, pursuant to 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention, the Examiner having determined that there is no allowable generic or linking claim, while noting that election was made *without* traverse in Applicants' reply dated August 18, 2005.

The Examiner also indicates that claims 3 and 8 are withdrawn from further consideration, in accordance with 37 C.F.R. § 1.142(b), as being drawn to a non-elected species. He notes, in this connection, that while Applicants elected Species I, drawn to FIG. 6 without traverse, and stated that claims 1-14 read on the Species, claims 3 and 8 recite seven (7) servers (as shown in FIG. 7) and, therefore, do not read on Species I (FIG. 6, he says, showing only six (6) servers).

* * * * *

In response, Applicants have cancelled claims 3, 8, 15 and 16, accordingly, without prejudice or disclaimer.

* * * * *

The Examiner then objected to claims 1, 2, 4-7 and 9, citing informalities. More particularly, according to the Examiner, the language “a [first, second, etc.] server for hosting a [first, second, etc.] virtual portal having...” is unclear as to whether the elements recited after “having” belong to the virtual portal or the server. The Examiner states that appropriate correction is required.

The Examiner proposes that Applicants amend the claims to either read “a [first, second, etc.] server for hosting a [first, second, etc.] virtual portal, the [first, second, etc.] *portal having...*” or read “a [first, second, etc.] server for hosting a [first, second, etc.] virtual portal, the [first, second, etc.] *server having...*” (emphasis added).

He comments that, in examining the claims, the text was interpreted as meaning “the portal having” the elements and the server for hosting the portal which has those elements (in other words a server capable of hosting a portal having those elements). The elements themselves, the Examiner indicates, were interpreted as intended use. In addition, the Examiner notes that an amendment in the form “the server having” would be interpreted as positively reciting the elements as parts of the server.

* * * * *

In response, Applicants have amended claims 1, 2, 4-6 and 9, accordingly, to delineate “a [first, second, etc.] server ~~for~~ hosting a [first, second, etc.] virtual portal, the *[first, second, etc.] virtual portal having* at least one application...” to better define the invention without limiting effect. (emphasis and strikethrough format added as to the deleted term).

* * * * *

Next, the Examiner rejected claims 10-14 under 35 U.S.C. § 112, second paragraph, for indefiniteness. The Examiner notes that these claims provide multiple recitations of “a device”, explaining that it is not clear whether the claims intend to recite a single device having all recited elements, or a number of different devices each having one of these elements. With specific regard to claims 11 and 14, the Examiner takes the position that these claims are indefinite because, he says, the term “and/or” is indefinite.

* * * * *

Accordingly, Applicants have amended independent claims 10-14, without prejudice or disclaimer, to clarify each “device” as - - a [first, second, or third, etc.] device - -.

Regarding the language “and/or” in claims 11 and 14, Applicants respectfully submit that use of alternative expressions or any style of expression which makes clear the boundaries of the subject matter for which protection is sought is not indefinite. MPEP § 2173.01. Applicants also respectfully note that a claim term that is not defined in the Specification is not indefinite if the meaning of the term is discernable (See MPEP § 2173.02) and that the words of a claim must be given their “plain meaning” unless they are defined in the Specification. MPEP § 2111.01.

According to the *American Heritage Dictionary of the English Language*, 4th Edition, Copyright 2000, Houghton Mifflin Company, the term “and/or” means “one or the other or both” of the terms connected by it. Consistent with the plain meaning of the term, Applicants use of “and/or” refers to use of modular reporting programming, modular auditing programming or both.

Withdrawal of the Examiner's rejection under § 112 is, therefore, respectfully requested.

* * * * *

Next, the Examiner rejected claims 1, 2, 4 and 5 under 35 U.S.C. § 103(a) as being obvious and, therefore, unpatentable over Johnson et al., U.S. Patent Application Publication No. US-2002/0052792. In particular, the Examiner argues that Johnson et al. (e.g., paragraph [0110]) show a first server comprising a merchant server and at least a second and a third server, in turn, comprising tax service servers. Also, the Examiner takes the position that Johnson et al. teach a communication infrastructure linking the merchant and tax service servers. He admits that Johnson et al. do not expressly disclose a fourth, a fifth, a sixth and a seventh server, but takes official notice that it is notoriously old and well known in the art to spread a functionality among any number of servers. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to use the additional servers in order to reduce the individual load on each server. He comments that the servers are capable of performing all steps of the recited intended use.

Thereafter, the Examiner rejected claims 6, 7 and 9-14 under 35 U.S.C. § 103(a) as obvious and, therefore, unpatentable over Johnson et al., as applied to claim 1 above, and further in view of Allon et al., U.S. Patent No. 5,539,883, and the Propel reference. More specifically, the Examiner takes the position that Johnson et al. teach, in addition to the elements noted above, an applications module, a database module, a tax remittance module, a security module (allegedly providing for submission of data via a secure site), and a continuous accessibility module comprising software supporting the broadband connection. Johnson et al. further disclose, says the Examiner, a system backup and

recovery module, and a system monitoring module, on grounds that Johnson et al. use Windows which purportedly has these capabilities. However, he acknowledges that Johnson et al. do not explicitly show a load balancing module, a tax computation module, or software modules handling XML data. The Examiner then looks to Allon et al. as showing load balancing and scalability software, and concludes that it would have been obvious to one of ordinary skill in the art to modify the apparatus of Johnson et al. by using a load balancing module in order to keep part of the system from overloading.

The Examiner further looks to the newly cited Propel reference for allegedly teaching a tax module and creating the software in a modular architecture. Accordingly, the Examiner concludes that it would have been obvious to one of ordinary skill in the art to further modify the apparatus of Johnson et al. by providing a tax computation module to minimize the software the user must have.

Regarding the operations of receiving, parsing, interpreting, processing, converting to another format including TXP, and sending messages in XML, the Examiner takes official notice that it is notoriously old and well known in the art to do so. He concludes that it would have been obvious to one of ordinary skill in the art to further modify the method of Johnson et al. in this way in order to provide for flexible and adaptive information identification and to take advantage of a standard protocol.

As for claim 9, the Examiner explains that, as previously noted, functionality can be distributed in any way among any number of servers. He argues that the system of Johnson et al. further shows a server determining when a transaction request has been made. As for claims 10-14, the Examiner notes that all recited modules are shown, as discussed above.

Turning now to the arguments submitted by Applicants in the Amendment dated December 20, 2004, the Examiner states that such arguments have been fully considered but are not deemed to be persuasive. He notes that the arguments with respect to claims 6, 7 and 9-14 have been considered but are moot in view of the new ground for rejection, and that the arguments directed to claims 15 and 16 are also moot in view of their withdrawal from consideration.

With respect to claims 1, 2, 4-7 and 9, the Examiner takes the position that the argued elements do not appear to be positively claimed as elements of the server, but rather as elements of the virtual portal and are intended use of the servers.

Next, the Examiner asserts that the argued elements of the final paragraph of p. 27 (namely, the argument that (i) Applicants' invention is a tax computation and reporting system that automatically and intelligently identifies and monitors taxable transactions, accurately calculates in real-time the taxes due on the transaction, extracts any taxable transactions which require human intervention, e.g., sales and/or use tax for payments and accruals, and remits those remaining sales and/or use tax payments to government authorities that do not otherwise need human intervention", and (ii) that Applicants' tax computation operations are performed by an enhanced software system for calculating sales and/or use tax for payments and accruals, e.g., T-Square, which is found nowhere in the cited reference") do not appear to be recited in the claims.

In addition, the Examiner indicates, with regard to Applicants' arguments that the redundant servers of Johnson et al. are improperly applied as prior art because Johnson et al. contemplate full redundancy of all functions, that it is not claimed that only certain functions may be provided with redundancy.

Last, the Examiner takes the position, with respect to Applicants' argument that the combination [of Johnson et al.] with Allon et al. is improper because it does not recite load balancing operations to a sales tax assessment, that the recitation as such was not claimed.

* * * * *

In response, Applicants respectfully maintain their position with respect to the Examiner's reading and application of the cited references.

First, unlike the cited references, Applicants' invention is a *distributed* tax computation and reporting system that automatically and intelligently identifies and monitors taxable transactions, accurately calculates in real-time the taxes due on the transaction, extracts any taxable transactions which require human intervention, e.g., sales and/or use tax for payments and accruals, and remits those remaining sales and/or use tax payments to government authorities that do not otherwise need human intervention. In addition, and also contrary to the teachings of the references, Applicants' tax computation operations are performed by an enhanced software system for calculating sales and/or use tax for payments and accruals, e.g., T-Square, which is found nowhere in the cited references.

Regarding the Examiner's assertion that the foregoing argued elements do not appear to be recited in the claims, while Applicants believe that such elements are, at a minimum, inherent, the claims are amended to clarify particulars set forth, namely, the automatic, real-time operation of Applicants' system. Applicants' claims are also amended to clarify the ability of Applicants' system to calculate sales and/or use tax for payments and accruals, extract any taxable transaction regarding sales and/or use tax for

payments and accruals that may require human intervention, and report to government authorities the amounts due on any remaining taxable transactions that do not otherwise require human intervention.

Second, with respect to the Examiner's assertion that the argued elements are not positively claimed as elements of the server, but rather as elements of the virtual portal and are, therefore, intended use of the servers, Applicants respectfully refer the Examiner to the aforementioned amendment to claims 1, 2, 4-6 and 9, made for clarification purposes, deleting the term "for" so that the operative phrase reads "a [first, second, third, etc.] server ~~for~~ hosting a [first, second, third, etc.] virtual portal, the [first, second, third, etc.] virtual portal having". (strikethrough format added as to the deleted term).

Such amendments, we submit, are made to better define the invention without limiting effect.

Third, although Johnson et al. state, in paragraph [0110], that their purported invention "preferably resides on a number of redundant relational databases", we respectfully maintain our position that such is not tantamount to Applicants' invention.

More specifically, Applicants respectfully reiterate that each of Applicants' servers performs a *different* function and is not equipped to carry out each and every operation of Applicants' overall system. Otherwise, inherent limitations of hardware processing speed and capacity, we submit, would render such a system unable to carry out its intended real-time function, nor could it handle the vast bulk of information necessary, in the context of tax assessment. Conversely, it is not considered practicable to extend the functions of Applicants' system which utilizes one or more servers for each system operation, to a series of identical, redundant servers, each hosting all operations of

the overall system. For example, while Applicants' Web server hosts e-content for a user, a different server is preferably utilized to parse data so that it may be recognized and used by another server.

While the Examiner asserts that "it is not claimed [by Applicants] that only certain functions may be provided with redundancy", Applicants respectfully disagree and state that redundancy, as is indicated in their claims between their fifth and sixth servers (which are at least partially redundant of their third and fourth servers, respectively) as well as their sixth and seventh servers (which operate at least partially redundant to their fourth and fifth servers, respectively), is directed to at least one of the *identified set of applications on an identified server of which a different server (also identified) is at least partially redundant*. This is to be distinguished from having all applications of all of the servers, collectively, on a single redundant server. Rather, Applicants' redundancy feature is distributed in parts among other servers - for example, in claim 5, the fifth server has at least one application redundant to one provided in the third server, and the sixth server has at least one application redundant to what is specifically identified as an application performed by the fourth server. Because Applicants' redundancy relates only to particular applications of the specific servers indicated rather than providing one or more servers each of which is redundant of all applications performed by the system as a whole, the teachings of Johnson et al., we respectfully submit, do not apply.

Fourth, as for the Examiner's position that Applicants' claims do not recite application of load balancing operations to a sales tax assessment, in view of Applicants'

clarifications provided above as to calculation of sales and/or use tax for payments and accruals, such is now considered moot.

* * * * *

As for the remaining points raised by the Examiner, in particular, his assertion that it is “notoriously old and well known in the art” to send messages in XML, in the context of the present invention Applicants respectfully disagree and state that operations, within the same system, of sending messages in XML, parsing the data received for XML-based data, interpreting the XML-based data for selected data processing operations, processing XML-based data, and receiving XML-based transactional data, in the context of a modular architecture for a tax computation and reporting system, we submit, is both novel and non-obvious. Also, we respectfully disagree that it would be obvious to so modify the method of Johnson et al. in order to provide flexible and adaptive information identification.

Also, Applicants respectfully reiterate that Johnson et al. neither disclose nor do they suggest a modular architecture for a tax computation and reporting system. Although the Examiner asserts that Applicants’ system backup and recovery module and system monitoring module are inherent in Johnson et al., citing that Microsoft Windows software has these capabilities, Applicants again respectfully disagree. While Windows may provide such functions generally, such are not “modular” but rather are embedded in Window’s single operating system platform for each server on which that operating system has been installed.

Moreover, Applicants respectfully restate that they can find no disclosure or suggestion in Allon et al. as to application of its purported network load balancing

operations to a sales tax assessment, remittance and collection system, as set forth by Johnson et al., nor is there any indication in Allon et al., we submit, that such a problem exists in the art of sales tax assessment or vice versa. Accordingly, combination of the teachings of Allon et al. with those of Johnson et al., or vice versa, we respectfully submit, is considered a mere hindsight combination of elements.

As for the new reference, Propel, we respectfully submit that there is similarly no disclosure or suggestion of problems in Allon et al. or Johnson et al. that would or could warrant combination and integration of the teachings of the Propel reference with those of Allon et al. and/or Johnson et al.

Accordingly, neither Johnson et al., Allon et al. nor the Propel reference, whether taken alone or in any combination, obviate, disclose or suggest Applicants' invention, as claimed.

* * * * *

Withdrawal of the Examiner's rejections are, therefore, respectfully requested.

* * * * *

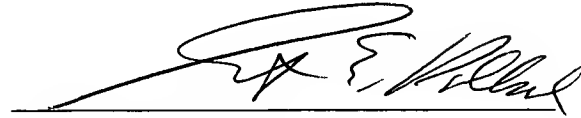
Applicants have made a good faith attempt to place this Application in condition for allowance. Favorable action is requested. If there is any further point requiring attention prior to allowance, the Examiner is asked to contact Applicants' counsel at (646) 265-1468.

Please charge any additional fees that may be required to Deposit Account No.
08-2025.

Respectfully submitted,

Hong M. Dang et al.

By:

A handwritten signature in black ink, appearing to read "Grant E. Pollack", written over a horizontal line.

Grant E. Pollack, Esq.
Attorney for Applicants
Reg. No. 34,097
Date: February 3, 2006
Ph. No.: 646-265-1468

POLLACK, P.C.
Intellectual Property Attorneys
The Chrysler Building
132 East 43rd Street, Suite 760
New York, NY 10017